Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	
Amendment of Parts 2, 25 and 68 of the	)	
Commission's Rules to Further Streamline	)	
the Equipment Authorization Process for	)	
Radio Frequency Equipment, Modify the	)	
Equipment Authorization Process for	)	
Telephone Terminal Equipment, Implement	)	
Mutual Recognition Agreements and Begin	)	
Implementation of the Global Mobile Personal	)	GEN Docket No. 98-68
Communications by Satellite (GMPCS)	)	
Arrangements	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 14, 1998 **Released: May 18, 1998**

Comment Date: 45 days from date of publication in the Federal Register
Reply Comment Date: 60 days from date of publication in the Federal Register

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

I. INTRODUCTION

1. By this action, the Commission is proposing to amend Parts 2, 25 and 68 of the rules to provide the option of private sector approval of equipment that currently requires an approval by the Commission. We are also proposing rule changes to implement a Mutual Recognition Agreement (MRA) for product approvals with the European Community (EC) and to allow for similar agreements with other foreign trade parties. These actions are intended to eliminate the need for manufacturers to wait for approval from the Commission before marketing equipment in the United States, thereby reducing the time needed to bring a product to market. We are also proposing an interim procedure to issue equipment approvals for Global Mobile Personal Communication for Satellite (GMPCS) terminals prior to domestic implementation of the

GMPCS-MOU Arrangements.[1] [2] That action would benefit manufacturers of GMPCS terminals by allowing greater worldwide acceptance of their products. The full implementation of the GMPCS Arrangements will be the subject of a future proceeding.

2. Section 11 of the Communications Act of 1994, as amended, requires the Commission to review biennially all regulations applicable to the operations and activities of providers of telecommunications service to determine whether any such regulations are no longer necessary as the result of meaningful economic competition between the providers of such service. 47 U.S.C. § 161(a). Section 11 further requires the Commission to modify or repeal any regulation no longer necessary in the public interest. 47 U.S.C. § 161(b). In this proceeding, the Commission is proposing, among other things, procedures for empowering private entities to perform many of the conformity assessment activities that the Commission currently performs with respect to terminal equipment to be connected to the public switched telephone network. The Commission is proposing to permit private entities to perform these activities as the first step in the streamlining of the Part 68 registration program generally. Accordingly, the Commission is initiating this proceeding as part of its 1998 biennial regulatory review.

II. BACKGROUND

3. Section 302 of the Communications Act of 1934, as amended, authorizes the Commission to make reasonable regulations, consistent with the public interest, governing the interference potential of equipment that emits radio frequency energy.[3] The purpose of this provision is to ensure that radio transmitters and other electronic devices meet certain standards to control interference before they reach the market. The Commission carries out its responsibilities under Section 302 in two ways. First, the Commission establishes technical regulations for transmitters and other equipment to minimize their potential for causing interference to radio services. Second, the Commission administers an authorization program to ensure that equipment reaching the market complies with the technical requirements. The authorization program requires that equipment be tested either by the manufacturer or at a private test laboratory to ensure that it complies with the technical requirements. For a large number of devices, once the equipment has been tested and found to comply, it may be marketed without any approval from the Commission. However, for equipment which the Commission has determined may pose a greater risk of interference, the Commission requires the submission of

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[1] "Global Mobile Personal Communications by Satellite" (GMPCS) service is defined in the 1996 Final Report of the World Telecommunications Policy Forum as: "any satellite system, (i.e., fixed or mobile, broadband or narrow-band, global or regional, geostationary or non-geostationary, existing or planned) providing telecommunication services directly to end users from a constellation of satellites."

[2] The GMPCS - MOU arrangements are intended to allow the worldwide transport and use of GMPCS equipment. They are described in more detail later in this Notice.

[3] *See* 47 U.S.C. § 302(a).

an application which must be reviewed and approved before the equipment can be marketed. The Commission may also request a sample of a device to confirm it complies.

4. Part 68 of the Commission's rules applies to terminal equipment connected to the telephone network.[4] Part 68 was enacted more than two decades ago to facilitate competition in the telecommunications equipment industry and to expand the options available to telecommunications customers for the connection of customer premises equipment and wiring to the telephone network. Since that time, Part 68 has standardized the interfaces between customer premises equipment and the public switched telecommunications network while protecting that telecommunications network from harm that might be caused by the connection of telecommunications terminal equipment. The potential harm addressed by Part 68 include electrical hazards to telephone company personnel and equipment, the degradation of telecommunications services to third parties, and malfunctioning of billing equipment. In addition, Part 68 contains rules designed to ensure that persons with hearing aids are afforded reasonable access to the telephone network.[5] The Commission administers a registration program to ensure that terminal equipment complies with Part 68. The registration program requires that terminal equipment must be tested for compliance either by the manufacturer or at a competent test laboratory. An application form, test procedure, and test results must be reviewed by the Commission, and the Commission must grant a registration number before the equipment can be imported to the United States or connected to the public switched telecommunications network.[6]

5. On April 2, 1998, the Commission adopted a *Report and Order* (*"Order"*) in ET Docket 97-94.[7] The *Order* amended Parts 2, 15, 18 and other rule parts to: 1) simplify our equipment authorization processes; 2) deregulate the equipment authorization requirements for certain types of equipment; and 3) provide for electronic filing of applications for equipment authorization. These actions were designed to reduce the burden of the equipment authorization program on manufacturers.

6. While we have consistently endeavored to minimize the burden of our equipment certification and registration programs on manufacturers, we believe there are steps we can take to further reduce that burden. Accordingly, we now propose to further streamline our Part 2 equipment authorization program and to commence streamlining of Part 68 of our rules in order to enable designated private parties to certify and register equipment. We also propose modifications to Parts 2 and 68 of the Commission's rules to implement the Mutual Recognition

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[4] 47 C.F.R. § 68.1.

[5] *Id.*

[6] *See* Form 730 Application Guide, Registration of Telephone and Data Terminal Equipment, Approved by OMB 3060-0056, Exp. 3/31/2000, FCC, Rev C-276, Nov. 1997, *and see* 19 U.S.C. § 3101 "Telecommunications Trade Act of 1988" Pub.L. 100-418, Title I § 1372, Aug. 23, 1988, 102 Stat. 1216.

[7] *See Report and Order* in ET Docket 97-94, adopted April 2, 1998.

Agreement between the United States and the European Community (US/EC MRA) and to prepare for future mutual recognition agreements that the United States may enter into.[8] The US/EC MRA serves the interests of the United States by promoting trade and competition in the provision of telecommunications products and increasing access to EC markets by reducing the costs, delays, and other burdens upon manufacturers seeking to have their products approved for sale in the EC.

7. The International Telecommunication Union (ITU) has been addressing product approval issues for equipment that will be used in Global Mobile Personal Communications by Satellite (GMPCS) systems. There are several types of low earth orbit (LEO) GMPCS systems, two of which are termed "Little Leo" and "Big Leo" systems. "Little Leo" systems provide data-only Mobile-Satellite Service (MSS) via a constellation of non-Geostationary satellite orbit (NGSO) satellites operating below 1 GHz. "Big Leo" systems provide voice and data Mobile-Satellite Service (MSS) via a constellation of one or more non-Geostationary satellite orbit satellites operating in the L-band (frequencies between 1610-1626.5 MHz).[9] Several Little Leo and Big Leo systems are now either available commercially or slated for commercial service in 1998. The ITU recognized that a variety of issues, including the possible need for equipment to be approved in every country where service might be provided, could pose a substantial impediment to the development of GMPCS systems. Accordingly, the ITU held a World Telecommunications Policy Forum in Geneva in 1996 where national regulators, GMPCS operators, manufacturers and service providers met to discuss the deployment and technical capabilities of GMPCS systems. At that time, participants resolved to facilitate circulation of GMPCS user terminals by drafting Arrangements specifying terminal licensing, type approval, marking, data traffic provisions and recommendations for customs officials in order to guide countries in developing national regulatory regimes for GMPCS. Development of the GMPCS Arrangements was completed in October 1997.

8. Along with other Administrations, the United States is eager to implement the GMPCS Arrangements and adopt domestic rules and requirements expeditiously in order to facilitate the global roaming of GMPCS terminals through national territories without such terminals being subject to import restrictions, such as confiscation or excessive tariffs or duties. We believe that rapid implementation of these Arrangements by Administrations and the institution of a global registry and GMPCS marking regime will ensure the early introduction of these new global voice, data and broadband services to developed and developing world markets. However, we also recognize the need for GMPCS systems which are currently operating or planning to begin operating shortly to be eligible for equipment authorization prior to adoption of our final rules

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[8] For example, the U.S. is currently involved in negotiations for an MRA with the Asia-Pacific Economic Cooperation (APEC).

[9] The licensing and equipment approval requirements to ensure global circulation of GMPCS equipment will be considered in a future FCC rule making implementing the final GMPCS MoU Arrangements, adopted by a multilateral "GMPCS Working Group" with the support of the International Telecommunication Union Secretariat on October 7, 1997.

implementing the GMPCS-MoU Arrangements. Thus, we are also outlining in this Notice a limited set of requirements that must be met in order to secure FCC equipment authorization for terminals used in commercial systems that are planned to be in operation prior to adoption of a final FCC Order implementing the GMPCS Arrangements.

III. DISCUSSION

9. In the following discussion, we propose rule modifications intended to further streamline the Part 2 equipment authorization program and to commence the streamlining of our Part 68 program. We also discuss the US/EC MRA and provide a brief overview of its development and purpose. We present our tentative conclusions and propose additional modifications to Parts 2 and 68 of our rules specifically oriented towards implementation of the US/EC MRA and towards implementation of future similar agreements with other regions of the world. We also discuss our proposal to approve terminals used in the GMPCS service.

Part 2 authorization program streamlining

10. In the *Order* in ET Docket No. 97-94, the Commission took several important steps to reduce the burden of the Part 2 equipment authorization program. Those actions simplified the equipment authorization rules, thus making it easier to understand and comply with the rules. Many types of equipment that previously required Commission approval, were shifted to manufacturer self-approval, thereby eliminating delays in bringing products to the market.[10] Finally, the FCC equipment authorization process was streamlined by implementing an electronic filing system for applications.

11. While manufacturer self-approval is appropriate for many types of products, certain products require closer oversight due to such factors as a high risk of noncompliance, the potential to create significant interference to safety and other communications services, and the need to ensure compliance with requirements to protect against radio frequency exposure. Products that currently require FCC certification include mobile radio transmitters, unlicensed radio transmitters and scanning receivers. We are not proposing any further relaxations of the certification requirements for various equipment at this time. We request comments on these conclusions. We note, however, that in 1996 Congress gave the Commission explicit authority to authorize the use of private organizations for testing and certifying equipment.[11] We believe

[10] There are two self-approval processes, verification and Declaration of Conformity (DoC). The procedures are similar, except that the DoC procedure has an additional requirement to test the equipment at an accredited laboratory. The DoC procedure is required for equipment where a higher degree of certainty is necessary to ensure it complies.

[11] *See* 47 U.S.C. § 302(e).

that it would be beneficial to exercise this authority by allowing parties other than the Commission to certify equipment. Allowing parties other than the Commission to certify equipment would provide manufacturers with alternatives where they could possibly obtain certification faster than available from the Commission. Further, by providing for other product certifiers, manufacturers would have the option of obtaining certification from a facility in a more convenient location. An additional benefit of allowing other parties to certify equipment would be a reduction in the number of applications filed with the Commission. This would enable us to redirect resources to enforcement of the rules. Finally, allowing equipment to be certified by parties located in other countries is an essential and necessary step for concluding mutual recognition agreements, as discussed further below. In light of these considerations, we are proposing to allow private organizations to certify equipment as an alternative to certification by the Commission. We will refer to these organizations as "Telecommunication Certification Bodies", or TCBs, since their purpose will be to grant certification to telecommunication equipment.[12]

12. Qualification Criteria for TCBs. We believe that it is important that we establish appropriate qualification criteria for Telecommunication Certification Bodies to ensure that the equipment they certify complies with the Commission's rules. We note that Section 302 of the Act gives the Commission authority to establish qualifications and standards for private organizations that may be authorized to certify equipment.[13] We observe that an international standard already exists that establishes appropriate qualifications for product certifiers: the International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) Guide 65 (1996), *General requirements for bodies operating product certification systems*.[14] ISO/IEC Guide 65 requires that product certifiers must:

- Be impartial
- Be responsible for their decisions
- Have a quality system
- Have personnel with knowledge and experience relating to the type of work performed
- Document the certification system
- Maintain records of approvals
- Conduct internal audits
- Perform post-market surveillance

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[12] Under the new rules adopted in Docket 97-94, there is a single authorization process for equipment requiring an approval, which is called "certification". *See Report and Order* in ET Docket 97-94, adopted April 2, 1998. We will refer to "TCBs," or Telecommunication Certification Bodies, in order to distinguish these bodies from Certification Bodies ("CBs"), the designation generally used internationally for bodies working with safety regulations.

[13] *See* 47 U.S.C. § 302(e)(3).

[14] ISO/IEC Guide 65 is available through the American National Standards Institute, Customer Service, 11 West 42nd Street, New York, NY - 10036, telephone 212-642-4900, facsimile 212-302-1286, or e-mail to jrichard@ansi.org. This document is also available through national standards organizations around the world.

Further requirements and details are included in the standard. We tentatively conclude that for the purposes of Part 2 of the Commission's rules, ISO/IEC Guide 65 provides appropriate qualification criteria for TCBs. Further, we note that ISO/IEC Guide 65 is expected to be used as the primary qualification criteria for TCBs under mutual recognition agreements, so use of this document for our domestic purposes will facilitate acceptance of U.S. certifications internationally and thereby promote U.S. trade abroad. We invite comment on our proposal to use ISO/IEC Guide 65 as the qualification criteria for TCBs.[15]

13. In addition to the general requirements of ISO/IEC Guide 65, we believe certain additional specific requirements are appropriate to qualify as a TCB. The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof. We also believe that the telecommunication certification body should have the technical expertise and capability to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25 to demonstrate it is competent to perform such tests.[16] The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. Finally, we will require TCBs to make a commitment to participate in any consultative activities identified by the Commission to establish a common understanding and interpretation of applicable regulations. We invite comments on these proposals and whether any additional requirements may be appropriate.

14. Procedure for Designating TCBs. To show compliance with our qualification criteria, we are proposing to require that parties desiring to be TCBs be evaluated and approved by the National Institute of Standards and Technology under its National Voluntary Conformity Assessment System Evaluation (NVCASE) program. This program is used currently to certify that organizations approving equipment for export meet the requirements of ISO/IEC Guide 65. Such an approach would provide a high degree of confidence that TCBs meet these requirements for domestic approval of equipment. We note that NIST determines compliance with ISO/IEC Guide 65 based on an assessment performed in accordance with the standards for the accreditation of certification bodies contained in ISO/IEC Guide 61.[17] If such an approach is adopted, we will work with NIST to ensure that the NVCASE program continues to meet the Commission's requirements for evaluating TCBs. Accordingly, we propose to designate as a TCB any organization that is accredited by NIST under the NVCASE program. Further, we will

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[15] We recognize that ISO/IEC Guide 65 cross references a number of other relevant ISO/IEC Guides.

[16] ISO/IEC Guide 25, *General Requirements for the Competence of Calibration and Testing Laboratories.*

[17] ISO/IEC Guide 61 (1996) *General requirements for Assessment and Accreditation of Certification/Registration Body assessment and Accreditation Systems - - General Requirements for Operation.*

publish a list of all designated TCBs. We invite comments as to any concerns about requiring accreditation by NIST, particularly regarding cost issues. An alternative to requiring NVCASE accreditation would be for the Commission to establish and administer its own program for designating TCBs. Comments are invited on this alternative.

15. Any organization that meets the qualification criteria and follows the necessary procedures may be designated as a TCB. They may define the scope of activity or products for which they seek to be designated as a TCB. Thus, TCBs may be specifically qualified to certify only certain types of equipment. We also do not intend to restrict the number of TCBs. We expect to adopt into our rules qualification criteria and designation processes sufficient to ensure that TCBs reliably perform to the highest standards. Nevertheless, we anticipate that circumstances may arise where it may be necessary to suspend or revoke a TCB's certification authority. We understand that under the NVCASE program a TCB's accreditation may be suspended or revoked for just cause. We invite comment regarding enforcement and monitoring of TCB standards and performance. We also invite comment as to the procedures that may be appropriate for suspension or revocation of a TCB's designation. In the event of suspension or revocation or other disciplinary action against a TCB, any equipment that was certified by that TCB can continue to be imported and marketed provided that equipment otherwise conforms with the Commission's rules. We seek comment on this proposal.

16. It would be difficult for the Commission or NIST to evaluate organizations outside the United States. For example, in some cases it may be necessary to visit a TCB to inspect the facility and address particular issues. Such visits would be particularly burdensome for foreign labs that would have to absorb significant travel and other expenses in order to comply with regulatory and site inspection requirements. As noted below, the US/EC MRA provides a framework whereby designating authorities in Europe would have the ability to designate European TCBs. A similar approach is envisioned under the draft Asia-Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement.

17. Implementation Matters. With respect to the designation of TCBs for certification of product compliance with Part 2 of the Commission's rules, we recognize that there are a number of details that must be addressed before we can allow TCBs to certify equipment. As a general matter, we expect TCBs to perform much the same application processing functions that are currently performed at the Commission's Laboratory in Columbia, Maryland. In this regard, we are proposing the following policies and guidelines with regard to certification of products by TCBs:

a) Certification must be based on the submittal to the TCB of an application that contains all the information required under the Commission's rules.
b) TCBs will be required to issue a written grant of certification.
c) The grantee of certification will remain the party responsible to the Commission for compliance of the product.
d) The certification must be based on type testing as defined in subclause 1.2(a) of ISO/IEC Guide 65, and the type testing should normally be done on only one

unmodified sample of the equipment for which approval is sought. This is the way the Commission currently handles the certification of products, which our experience has shown works well.

e) We will not restrict the fees that TCBs may charge for certification.

f) TCBs may either perform the required compliance testing themselves, or may accept and review the test data from manufacturers or other laboratories. TCBs may also subcontract with others to perform the testing. However, the TCB remains responsible for ensuring that the tests were performed as required and in this regard TCBs are expected to perform periodic audits to ensure that the data they may receive from others is indeed reliable.

g) Equipment certified by a TCB must meet all the Commission's labelling requirements, including the use of an FCC Identifier.

h) We will require TCBs to submit an electronic copy of each granted application to the Commission using the new electronic filing system for equipment authorization applications. This will allow us to easily verify whether a piece of equipment has been approved without having to locate the TCB which approved it and obtain the records. It will also allow us to monitor the activities of the TCBs to determine how many approvals are issued and for what types of equipment. Finally, this would create a common database that all parties can use to verify approvals and obtain copies of applications. Where appropriate, the file should be accompanied by a request for confidentiality for any material that qualifies as trade secrets.

i) TCBs may approve requests for permissive changes to certified equipment, irrespective of who originally certified the equipment.

j) We will require TCB's to periodically perform audits of equipment on the market that they have certified to ensure continued compliance.

We invite comment on these proposals and any other implementation issues that may need to be addressed. We are particularly interested in any alternative proposals that are less burdensome while still ensuring the integrity of the certification program.

18. While we propose to empower TCBs with authority to certify equipment, we believe that certain functions related to certification should not be delegated by the Commission. TCBs may not waive the Commission's rules. TCBs may not address new or novel issues requiring interpretation of the Commission's technical standards, testing requirements, or certification procedures. TCBs will not be empowered to authorize transfers of control of grants of certification. TCBs may not take enforcement action and must refer to the Commission any matters of noncompliance of which they become aware. Finally, any decision made by a TCB would be appealable to the Commission. We solicit comment on these proposals. We intend to give TCBs clear guidelines as to how to exercise their new authority and seek comment on what those guidelines should be.

19. We believe that a transition period of 24 months will be necessary before we may allow TCBs to certify equipment. This is similar to the provisions contained in the EC MRA and would provide parity between domestic and international product certifiers. We would seek to

have the 24 month period coincide with the transition period for the EC MRA. During the 24 month period, we will work closely with NIST on the evaluation and accreditation of TCBs. We will also work with the TCBs to ensure that they are fully familiar with the Commission's rules and will follow the same procedures we do in approving equipment. We seek suggestions for ways we can make the transition to allowing TCBs to certify equipment as quick, smooth and effective as possible.

20. We plan to continue to certify equipment for the foreseeable future, for a number of reasons. First, it will help smooth the transition to the new system until any major problems with it are resolved. Also, some manufacturers may prefer FCC certification for business reasons, since an approval issued by the U.S. Government may seem more legitimate to potential customers than one issued by another party. Finally, it is possible that certifiers may not emerge for certain types of equipment, so the Commission may be the only party available to approve it. However, we request comments on whether the Commission should eventually stop issuing approvals, and rely solely on designated TCBs. We also invite comments on concerns with the implementation of a new system, and any areas not covered above that need to be addressed.

The Part 68 Registration Program

21. In anticipation of the implementation of the US/EC MRA into Part 68 of the Commission's Rules, we recognize the importance of maintaining parity between TCBs based in the United States and those based in the EC. We tentatively conclude that the regulatory treatment of TCBs and the requirements for certification and registration of terminal equipment should be consistent, regardless of whether a TCB is located in the United States or in the EC. We also tentatively conclude that manufacturers and suppliers in the United States and the EC should face comparable requirements with respect to Part 68 certification and registration. We seek comment on these tentative conclusions.

22. We seek comment on the specific activities that certification bodies in the United States should be empowered to perform on behalf of domestic manufacturers and suppliers with respect to Part 68 certification and registration of products marketed in the United States. In particular, we seek comment on whether certification bodies should be permitted to perform conformance assessment, certification and registration activities. Conformity assessment includes product sample testing, product certification, and quality system recognition. These activities include evaluating or comparing a product, process, service, or system with a standard, specification, or regulatory criteria.[18] Certification activities include the performance of equipment testing and the production of reports attests that tested equipment conforms with Part 68 of our rules. We distinguish this term from registration, wherein the Commission approves

[18] In general, a conformity assessment body may be a testing laboratory, product certification body, or a quality system registrar, such as those used for ISO 9000 certification. *See Establishment* of the National Voluntary Conformity Assessment System Evaluation Program, Docket No. 920363-4058, 59 Fed. Reg. 19129 (1994).

a product for connection to the public switched telephone network and assigns a unique number to a particular product after it reviews test results and procedures submitted by a lab, supplier, or manufacturer, for that product, and the Commission verifies that the product conforms with Part 68. We also seek comment on whether and to what extent Commission supervision of these activities is necessary.

23. We seek comment on practices and requirements that will enable us to designate certification bodies that are competent to perform Part 68 activities without direct Commission supervision. With respect to this proposal, we seek comment on the range of issues presented for TCB designation under Part 2 of the Commission's rules, including qualification criteria, procedures for designating TCBs and other implementation matters.[19] Because Part 68 test procedures differ from those used for Parts 2, 15, and 18, TCBs that propose to certify equipment for compliance with Part 68 will need to demonstrate competence in Part 68 testing and knowledge of Part 68 rules. We tentatively conclude that TCB qualification criteria should be based on ISO/IEC Guide 65 and designation of TCBs would be performed by NIST in consultation with the Commission in the same manner as we have proposed with respect to Part 2.[20] We seek comment on these proposals.

24. We also seek comment on the methods by which TCBs may demonstrate their competence to test, certify and register products. For example, we seek comment on whether TCBs should use Form FCC 730 to transmit test data to the Commission for equipment registration.[21] We seek comment identifying criteria for certification reports or notices that the Commission may require from TCBs that have been designated as competent to perform Part 68 certification activity.

Mutual recognition agreements

25. The Office of the United States Trade Representative and the Department of Commerce have participated in negotiations over the past several years to develop a mutual recognition agreement for product approvals with the European Community. The Federal Communications Commission has also participated in these negotiations, as have industry representatives from both the United States and Europe. These negotiations culminated on June 21, 1997 when the US/EC MRA was finalized by the United States Trade Representative and a

[19] *See supra* paras. 12-21.

[20] *See supra* para. 15.

[21] *See* MRA, Section VIII, Transitional Arrangement. *And see* Form 730 Application Guide, Registration of Telephone and Data Terminal Equipment, Approved by OMB 3060-0056, Exp. 3/31/2000, FCC, Rev C-276, Nov. 1997.

representative of the European Community. The Agreement is expected to be signed in London on May 18, 1998.[22]

26. The US/EC MRA addresses conformity assessment activities in six industrial sectors: telecommunications equipment, electromagnetic compatibility, electrical safety, recreational craft, pharmaceutical good manufacturing practice, and medical devices. The scope of the US/EC MRA may also be expanded by mutual agreement to include additional equipment. A copy of the completed MRA is being inserted in the record for this proceeding.[23] The Commission's regulations apply directly to two industry sectors, telecommunications equipment and electromagnetic compatibility ("EMC"), among the six specifically addressed by the US/EC MRA. The telecommunications sector addresses terminal equipment covered by Part 68 of the rules, and transmitters covered by Part 2 and other parts of the Commission's rules. The EMC sector applies to equipment addressed by Parts 15 and 18 of the Commission's rules.[24]

27. Under the US/EC MRA, products can be tested and certified in the United States in conformance with the European technical requirements. The products may be shipped directly to Europe without any further testing or certification. In return, the MRA obligates the United States to permit parties in Europe to test and authorize equipment based on the United States technical requirements. The US/EC MRA thereby promotes bilateral market access and competition in the provision of telecommunications products and electronic equipment. The US/EC MRA also will reduce industry burdens and delays caused by testing and approval requirements for products marketed in the United States and Europe.

28. The US/EC MRA provides a 24 month transitional period that will be used to implement the regulatory or legislative changes necessary for both parties to implement the US/EC MRA. The period would begin on the effective date of the MRA, which at this time is anticipated to be July 1, 1998. At the end of this period the parties should be prepared for full mutual recognition of product certifications and registrations. We tentatively conclude that legislative changes will not be required for the United States to implement the US/EC MRA with regard to telecommunications equipment and electromagnetic compatibility.[25] In this proceeding

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[22] The Federal Communications Commission is a party to the agreement. 47 U.S.C. § 303(r) authorizes the Commission to make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of the Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

[23] *See* the Agreement on Mutual Recognition In Relation to Conformity Assessment Between the United States of America and the European Community.

[24] *See* 47 C.F.R. §§ 2, 15, 18, and 68.

[25] The actions required under the MRA are consistent with new authority provided in the Telecommunications Act of 1996 that permits the Commission to authorize use of private organizations for testing and certifying the compliance of devices or home electronics equipment and systems with FCC regulations. *See* Section 403(f) of the

we propose amendments to our rules to commence regulatory implementation of the US/EC MRA. Accordingly, we tentatively conclude that it is appropriate to issue specific proposals at this time to advance the process as promptly as possible.

29. Designation of TCBs for equipment exported to the United States from Europe. In accordance with the US/EC MRA, the United States and each member state of the European Community will identify a "Designating Authority" in its territory. A Designating Authority is a body with power to designate, monitor, suspend, remove suspension of or withdraw conformity assessment bodies, such as TCBs, in accordance with the US/EC MRA. Designating Authorities will in turn designate a number of TCBs, also within each country's territory, that will be empowered to certify products for conformity with the technical requirements of countries to which the equipment is exported. The Designating Authorities for the EC are listed in the US/EC MRA and are generally telecommunications regulatory authorities. We understand that EC designating authorities must meet the requirements of ISO/IEC Guide 61. The US/EC MRA states that the designation is based on international standards such as ISO/IEC Guide 65.

30. Designation of TCBs for equipment exported to Europe from the United States. The US/EC MRA lists the Designating Authorities for the United States as the National Institute of Standards and Technology (NIST) and the Federal Communications Commission.[26] NIST will designate Conformity Assessment Bodies in the United States for equipment that will be exported to Europe through its National Voluntary Conformity Assessment System Evaluation (NVCASE) program. NIST will oversee the United States Conformity Assessment Bodies on an ongoing basis to ensure that they are performing in a satisfactory manner. We believe it is unnecessary for the Commission to play a direct role in designating or supervising TCBs with respect to equipment going to Europe. However, the Commission will provide assistance and guidance to NIST as may be necessary. For example, if questions arise as to the performance of a United States-based Conformity Assessment Body, the Commission would make its expertise in testing and measurements available as needed to resolve such matters. Comments are invited on this general approach.

31. Administration of the US/EC MRA. The US/EC MRA provides for oversight of implementation by a Joint Sectorial Committee ("JSC").[27] The Agreement provides that Commission representatives will participate as appropriate in the Joint Committee, and will chair

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Telecommunications Act of 1996, Pub. L. No. 104-114, 110 Stat. 56 (1996) (adds new Section 302(e) to the Communications Act.)

[26] The Federal Aviation Administration (FAA) is also a designating authority for EMC aboard aircraft.

[27] The US/EC MRA states that it will be administered by a Joint Committee along with Joint Sectoral Committees ("JSCs") in the various sectors (i.e. - telecommunication and EMC). The Agreement also states that the Joint Committee and JSCs will consist of government representatives, with possible participation by private sector experts in the JSCs. These groups will establish their own operating procedures. Each party will have one vote. The Joint Committee and JSCs will provide a vehicle for the exchange of information, dispute resolution, and general management of the implementation of the US/EC MRA.

the JSCs for the United States with regard to telecommunications equipment and electromagnetic compatibility sectors. We tentatively conclude that Commission participation in the Joint Committee and JSCs will be important to ensure the successful administration and implementation of the US/EC MRA. For example, the Commission may serve as an independent authority to evaluate claims of performance deficiencies by United States TCBs or the noncompliance of specific equipment with European technical requirements. We invite comments on this general approach to administration and oversight of the US/EC MRA.

32. With regard to ensuring the ongoing compliance of TCBs, the US/EC MRA provides that if a particular TCB does not appear to be performing satisfactorily, the Commission may request that the noncompliant TCB take corrective actions. The Commission may also present appropriate evidence to the JSCs and/or Joint Committee and request removal of the TCB from the list of designated Certification Bodies. We note that the JSC for telecommunications equipment and EMC will produce a guidance document confronting these and other, more detailed issues relevant to bilateral implementation of this Agreement. We seek comment, however, recommending and discussing specific additions and modifications to our rules that will support and amplify both the Commission's and the JSC's efforts to ensure that all products introduced into the United States' marketplace remain in conformity with our rules.

33. Authority to approve equipment. We propose amending our rules as required to permit parties in MRA partner economies to certify radio frequency devices for conformance with Parts 2, 15, 18 and other rule parts and to test, and eventually register telecommunications equipment for conformance with Part 68. We tentatively conclude that these privileges should only be granted subject to the terms and conditions specified in the US/EC MRA. Specifically, we note that both the United States and our MRA partners retain the right to remove noncompliant equipment and impose penalties for marketing noncompliant equipment as provided under the applicable domestic law. We solicit comments on this general approach and invite suggestions as to any specific or additional steps that may be necessary or appropriate to transition our procedures and ensure continued compliance with the Commission's rules.

34. Asia-Pacific Economic Cooperation (APEC) MRA. The Office of the United States Trade Representative, at the request of the United States telecommunication industry, is negotiating an MRA for Conformity Assessment for Telecommunication products in the Asia-Pacific Economic Cooperation (APEC). APEC is a trade cooperative of eighteen economies, soon to be expanded to twenty-one economies, along the Pacific Rim. The APEC Telecom MRA is intended to facilitate trade in telecommunications and radio equipment among the APEC economies. A Task Force Group under the Telecom Working Group of APEC was established in March, 1997 to facilitate the development of the APEC Telecom MRA. FCC staff and representatives of the United States telecommunications industry have been participating in this Task Force Group and in these negotiations.

35. A text of the APEC Telecom MRA is expected to be considered at the APEC Ministerial Meeting on June 5, 1998 in Singapore, and it is possible the agreement may be concluded among the APEC members at that time. Participation in the APEC Telecom MRA

is voluntary; however, if an economy chooses to participate in the Agreement, then the use of the text becomes the governing document for conformity assessment between the participating economies. The key elements of the APEC Telecom MRA text are likely to be substantially similar to the key elements of the US/EC MRA text. A copy of the text of the draft APEC Telecom MRA will be placed in the record of this proceeding. We tentatively conclude that the rules proposed in this proceeding to implement the US/EC MRA may be sufficient to implement the APEC Telecom MRA. We seek comment on this tentative conclusion, and request comment identifying further rule changes that may be required to implement the APEC Telecom MRA.

36. Other MRAs. We anticipate that the United States may develop or participate in additional mutual recognition agreements that involve other regions of the world. For example, the Interamerican Telecommunications Committee (CITEL) of the Organization of American States is considering developing an MRA for the Americas region. The United States has also been approached by organizations, such as the European Free Trade Association (EFTA) seeking to develop and participate in an MRA with the United States. It is our hope that the policies and regulations we develop in this proceeding can be applied to future MRAs without substantial revision of our rules.

The GMPCS-MoU and Arrangements

37. In 1994, the International Telecommunication Union (ITU) Kyoto Plenipotentiary Conference proposed to convene a World Telecommunications Policy Forum to address the policy and regulatory issues raised by the introduction of Global Mobile Personal Communications Services offered by satellite (GMPCS). At this Forum, held in October 1996, international regulators and private sector entities, including GMPCS operators, service providers and manufacturers discussed the necessity of ensuring seamless, global service for GMPCS users by developing a procedure by which GMPCS terminals could freely roam through national territories without confiscation or imposition of duties or tariffs. They worked cooperatively to finalize a Memorandum of Understanding and a set of GMPCS Arrangements to ensure that Administrations had at their disposal a framework for the appropriate regulation of GMPCS terminals, specifically, blanket or class licensing, national type-approval, marking, the provision of traffic data and customs recommendations. Moreover, the Annex to the final set of Arrangements, completed in March 1998, contemplates a notification procedure to ensure that a single GMPCS MoU mark could be placed physically on GMPCS equipment in order to facilitate roaming of terminals as GMPCS users traveled globally. [28]

38. Implementation of the GMPCS-MoU Arrangements. The Commission will soon begin a general review of our rules in order to examine whether, and to what extent, our rules

[28] Copies of the MoU, the current list of Signatories, the final Arrangements and the Notification and Marking Implementation Plan (Annex) are available to the public at the FCC International Bureau Reference Center, 2000 M Street, N.W., lobby entrance.

may need to be amended to implement the final provisions outlined in the GMPCS Arrangements. In this review, we will also consider procedures to treat the variety of GMPCS terminals that users may bring to the United States from abroad. We expect to coordinate this proceeding closely with other U.S. government agencies and international bodies.

39. Interim Certification of GMPCS Equipment. We believe that, in the future, it will promote development of GMPCS if manufacturers can obtain certification for GMPCS mobile earth terminal equipment through the equipment certification process, rather than rely exclusively on a case-by-case licensing process. Expedient certification of terminals would be a major benefit to the global satellite industry, since an approval is recognized by many foreign countries as sufficient to allow the equipment to transit borders, whereas the Commission license, because it does not result in the marking of the terminal equipment, is not. In addition, as part of our future implementation of a certification procedure for GMPCS equipment, we intend to request comment on whether our current requirements for mobile earth terminals are adequate to prevent interference or are too severe. We will also request comment on whether other requirements would be more appropriate, and the justification for selecting such requirements for all types of GMPCS terminals.

40. We recognize, however, that certain GMPCS systems are now in operation or expected to commence operation before we can adopt final rules in our final GMPCS implementation proceeding. We believe we must allow for the expedient certification of GMPCS equipment as soon as possible to remove a potential barrier to the success of the service. Accordingly, we will immediately begin to certify, on an interim basis, GMPCS equipment that meets all the acceptable regulations under Parts 1, 2, and 25 of our rules and a stringent out-of-band emission standard as described below.

41. There is currently no requirement in the Commission's rules to obtain an equipment certification for a GMPCS terminal before it can be used or marketed. However, it is evident that the truly global, ubiquitous nature of GMPCS service delivery can be ensured only when the user has the capability of transporting the GMPCS terminal across national territories without delay or fees. The international recognition of this issue and the resulting GMPCS Arrangements has prompted the Commission to consider GMPCS terminals as similar to other devices which must receive an equipment authorization before they can be used or marketed. Specifically, GMPCS terminals function somewhat like cellular telephone terminals, except that they communicate with a satellite, rather than a terrestrial cell site. Also, they have operational requirements similar to other devices requiring a license, including operating frequency, channel bandwidth, output power, spurious emission and RF safety limits.

42. To date, we have issued mobile earth terminal authorizations to GMPCS service providers under a "blanket license."[29] These authorizations specify general operating parameters for a specific number of terminals and specific requirements for the protection of radiocommunication services, consistent with Section 1.1307, and Sections 25.135(b) and (c), 25.136(a) and (b), 25.202(a)(3), 25.202(a)(4), 25.202(d), 25.202(f), and 25.213(a)(1) and 25.213(b) of our rules. The Commission also indicated that, when applicable, licensees must meet any spurious emission restrictions established by the Commission in order to protect the Russian Global Navigation Satellite System (GLONASS) which is operating in bands adjacent to those used by some GMPCS terminals.

43. Since granting certain blanket licenses for some MSS systems which fall under the GMPCS umbrella, certain international and domestic organizations have proposed additional requirements for protecting radionavigation systems, beyond those included for Global Positioning Systems (GPS) in Section 25.213 of our Rules, concerning both suppression of emissions below 1610 MHz and preventing harmful interference from Big LEO systems operating in the adjacent 1610-1626.5 MHz band. First, the International Telecommunication Union's Radio Sector Study Group WP 8D has adopted a recommended standard for suppression of spurious emissions for MSS systems with mobile earth terminals operating in the 1610-1626.5 MHz band and will soon consider setting similar standards for other types of GMPCs terminals.[30] The European Commission/CEPT adopted a European Testing and Standards Institute (ETSI) standard late last year for both CDMA and TDMA-type Mobile Satellite Service (MSS) systems based on this ITU-R recommendation.[31]

44. The National Telecommunications and Information Administration (NTIA) proposed yet another set of standards to protect GPS and GLONASS as part of the Global Navigation Satellite System (GNSS). In September 1997, the NTIA petitioned the Commission to begin a rulemaking to amend Part 25 of the FCC's rules to incorporate additional limits to protect GNSS equipment operating within the 1559-1605 MHz radionavigation satellite service band. The NTIA recommended that, for MSS mobile earth terminals operating in the 1610-1660.5 MHz band, out-of-band signals must ultimately be limited to -70 dBW/MHz for wide band emissions and -80 dBW/700 Hz for narrow band emissions in the 1559-1605 range. The Commission will initiate a separate rule making to consider the NTIA proposal.[32]

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[29] See FCC File No. 423-DSE-P/L-96, Order and Authorization for U.S. Leo Services, released November 25, 1996, and FCC File No. 2170-DSE-P/L-94 Order and Authorization for Orbital Communications Corporation, released June 15, 1995.

[30] See Recommendation ITU-R M. 1343.

[31] See ETSI standards TBR-041 and TBR-042 for Mobile Earth Terminals in the 1.6/2.4 GHz and 2.0 GHz range, respectively.

[32] RM-9165

45. Authorization of GMPCS transmitters. We intend to allow GMPCS equipment to be voluntarily submitted for certification, on an interim basis, upon meeting all of the relevant Part 25 and Part 1 standards concerning frequency range, tolerance, out-of-band emission, spurious emission limits to protect GPS, and radiation hazards. Concerning the Commission's pending proceeding on additional protection standards for GNSS, we will be conditioning this interim approval for GMPCS terminal equipment operating in the band 1610-1626.5 MHz on the ability of the applicant to meet the strictest out-of-band emission limit proposed at this time, specifically, NTIA's out-of-band emission limit proposed for implementation by the year 2005. NTIA proposes an out-of-band emission limit of -70 dBW/MHz averaged over any 20 ms period for wide band emissions occurring between 1559-1605 MHz and -80 dBW/700 Hz for narrow band emissions occurring between 1559-1605 MHz. However, the NTIA's proposed limit on narrowband emissions specifies a measurement bandwidth of 700 Hz. As there is some question whether current instrumentation is capable of measuring across 700 Hz, it will suffice for purposes of interim type approval for manufacturers to demonstrate compliance with the narrowband standard of -80 dBW across 700 Hz *or less* in accordance with the RTCA Inc. Final Report in the context of GPS protection requirements.[33]

46. Finally, MSS satellite operators, service providers and mobile earth terminal manufacturers are advised that all final FCC equipment approvals will be conditioned on meeting the requirements and procedures adopted in our future GMPCS MoU implementation proceeding, including the specific spurious and out-of-band emission limits adopted in that proceeding.

PROCEDURAL MATTERS

47. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

48. Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission will send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA, See 5 U.S.C. Section 603.

[33] See RTCA Final Report, Appendix E, Table E4-4, Note 1.

49. Comment Dates. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comment on or before **[45 days from date of publication in the Federal Register]** and reply comments on or before **[60 days from date of publication in the Federal Register]**. To file formally in this proceeding, you must submit an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. Commenters are also invited to provide a separate copies of comments to the Office of Engineering and Technology, Common Carrier Bureau, and International Bureau. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554.

50. This *Notice* contains modifications to existing information collections. As part of the Commission's continuing effort to reduce paperwork burden, we invite the general public and other Federal agencies to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after publication of this Notice in the Federal Register]. Comments should address (a) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collections of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov.

51. IT IS ORDERED, that pursuant to Sections 4(i), 11, 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 161, 301, 302, 303(e), 303(f), 303(r), 304 and 307, this Notice of Proposed Rule Making is hereby ADOPTED.

52. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis to the Chief, Counsel for Advocacy of the Small Business Administration.

53. For further information regarding this Notice of Proposed Rule Making, contact Hugh L. Van Tuyl, (202) 418-7506 or Julius P. Knapp, (202) 418-2468, Office of Engineering and Technology. For Part 68 specific questions, contact Geraldine Matise, (202) 418-2320 or Vincent M. Paladini, (202) 418-2332, Common Carrier Bureau. For Part 25 specific questions, contact Tracey Weisler at 202-418-0744.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

PROPOSED RULE CHANGES

Title 47 of the Code of Federal Regulations Parts 2, is proposed to be amended as follows:

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. A new Section 2.960 is added to read as follows:

Section 2.960 *Designation of Telecommunication Certification Bodies (TCBs)*

Parties other than the Commission may be designated to approve equipment. These parties will be referred to as "Telecommunication Certification Bodies" or TCBs. Certification of equipment by a TCB must be based on an application with the all the information specified in this part. The TCB must process the application to determine whether the product meets the FCC requirements and must issue a written grant of equipment authorization.

(a) The Federal Communications Commission is the Designating Authority for designating TCBs in the United States to approve equipment subject to certification. The FCC will require TCBs to be accredited by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program to show compliance with the Commission's qualification criteria for TCBs. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs and testing laboratories. TCBs must comply with the requirements in § 2.962 of this Part.

(b) In accordance with the terms of a Mutual Recognition Agreement or Arrangement (MRA), bodies outside the United States will be permitted to authorize equipment in lieu of the FCC. The authority designating these telecommunication certification bodies must meet the following criteria.

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61.

(2) The organization assessing the telecommunication certification body shall appoint a team of qualified experts to perform the assessment covering all of the elements within the scope of accreditation. For assessment of telecommunications equipment, the areas of expertise to be used during the assessment shall include, but not be limited to electromagnetic compatibility and telecommunications equipment (wired and wireless).

3. A new Section 2.962 is added to read as follows:

Section 2.962 *Requirements for Telecommunication Certification Bodies*

Telecommunication certification bodies designated by the FCC, or designated by another authority pursuant to an MRA, must comply with the following criteria.

(a) Certification Methodology

(1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as in cases where certain tests are likely to render a sample inoperative.

(b) Criteria for Designation

(1) To be designated as a telecommunication certification body under this section, the body must, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it is to certify. The scope of accreditation shall specify the group of equipment to be certified and the applicable regulations.

(2) The telecommunication certification body must demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The telecommunication certification body shall have the technical expertise and capability to test the equipment it will certify and must also be accredited in accordance with ISO/IEC Guide 25 to demonstrate it is competent to perform such tests.

(4) The prospective telecommunication certification body must demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65 shall be taken into consideration.

(5) A telecommunication certification body shall participate in any consultative activities, announced by the Commission or NIST, to establish to facilitate a common understanding and interpretation of applicable regulations.

(c) Sub-contracting

(1) In accordance with the provisions of sub-clause 4.4 of ISO/IEC Guide 65, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated telecommunication certification body, including a supplier's laboratory, provided the laboratory has been assessed by the telecommunication certification body in accordance with ISO/IEC Guide 25, or has been accredited to ISO/IEC Guide 25.

(2) When a subcontractor is used, the telecommunication certification body remains responsible for the tests and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight must include periodic audits of products that have been tested.

(d) Procedures for Designation

(1) NIST will give 30 days for notice and comment before accrediting a prospective TCB. In the case of a foreign TCB, the foreign Designating Authority will provide 30 days for the prospective TCB to be designated in accordance with the MRA.

(2) In case of concern raised during the 30 day comment period, the Commission and NIST will allow sufficient opportunity for the Designating Authority and prospective TCB to provide comments before a decision will be made on the designation of the TCB.

(3) A list of designated TCBs will be published by the Commission.

(f) Post-certification requirements

(1) A TCB shall supply an electronic copy of each approved certification application to the Commission.

(2) In accordance with ISO/IEC Guide 65, the TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The importing party may at any time request a list of products certified by the certification body and may request and receive copies of product evaluation reports.

(3) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the supplier and the appropriate importing party. A

follow-up report shall also be provided within thirty days of the action taken by the supplier to correct the situation.

(4) Where concerns arise, the TCB shall provide a copy of the product evaluation report within 30 calendar days upon request by the Commission to the TCB and the manufacturer. If the certification report is not provided within 30 calendar days, a statement shall be provided to the Commission as to why such a report cannot be provided. This could be grounds for revocation of the product certification.

(g) In case of dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and designated TCBs will be afforded the opportunity to comment before a decision is reached. In the case of a TCB designated or recognized, or a product certified pursuant to a bilateral or multilateral mutual recognition agreement or arrangement (MRA), the FCC may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB. The FCC shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any problems arising under an MRA for the USTR's investigation or review under the Telecommunications Trade Act of 1998 (Section 1371-1382 of the Omnibus Trade and Competitiveness Act of 1988).

Title 47 of the Code of Federal Regulations Part 25, is proposed to be amended as follows:

4. The authority citation for Part 25 continues to read as follows:

Authority: Sections 25.101 to 25.601 issued under Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sections 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

5. A new Section 25.200 is added to read as follows:

Section 25.200 *Equipment authorization.*

(a) Mobile earth satellite terminals for use in the band of 1610 - 1626.5 MHz must be authorized by the Commission under its certification procedure for use under this part. The certification procedure is found in Subpart J of Part 2 of the Rules.

(b) In order to be granted certification, a transmitter must comply with the technical specifications in this part. Further, emissions in the band 1559-1605 MHz must be limited to -70 dBW / MHz averaged over any 20 millisecond period for wideband signals, and -80 dBW / 700 Hz for narrowband signals.

(c) Applicants for certification of transmitters that operate in these services must determine that the equipment complies with IEEE C95.1-1991, ``IEEE Standards for Safety Levels with

Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz" as measured using methods specified in IEEE C95.3-1991, ``Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Fields--RF and Microwave." The applicant for certification is required to submit a statement affirming that the equipment complies with these standards as measured by an approved method and to maintain a record showing the basis for the statement of compliance with IEEE C 95.1-1991.

Title 47 of the Code of Federal Regulations Part 68 is proposed to be amended as follows:

6. The authority citation for Part 68 continues to read as follows:

AUTHORITY: Sections 1, 4, 5, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 155, 201-5, 208, 215, 218, 226, 227, 303, 313, 314, 403, 404, 410, 522.

7. A new Section 68.230 is added to read as follows:

Section 68.230 *Certification Bodies Designated by the Commission*

Section 68.230 *Designation of Telecommunication Certification Bodies (TCBs)*

Parties other than the Commission may be designated to approve equipment. These parties will be referred to as "Telecommunication Certification Bodies" or TCBs. TCBs will require applications with the all the information specified in this part, process applications in the same manner as the Commission, and issue written grants of equipment authorization.

(a) The Federal Communications Commission is the Designating Authority for designating TCBs in the United States to approve equipment subject to certification. The FCC will require TCBs to be accredited by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs and testing laboratories. TCBs must comply with the requirements in § 2.962 of this Part.

(b) In accordance with the terms of a Mutual Recognition Agreement or Arrangement (MRA), bodies outside the United States will be permitted to authorize equipment in lieu of the FCC. The authority designating these telecommunication certification bodies must meet the following criteria.

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61.

(2) The organization assessing the telecommunication certification body shall appoint a team of qualified experts to perform the assessment covering all of the elements within the scope